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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 BRIAN DUBINSKY, an individual

12 Plaintiff,

13 v.

14 LIBERTY SURPLUS INSURANCE
15 CORPORATION, a New Hampshire
corporation; and DOES 1-10, inclusive,

16 Defendants.
17
18

Case No. CV 08-6744 MMM (JWJx)

[DISCOVERY MATTER]

**STIPULATED PROTECTIVE
ORDER**

19 Having considered the Stipulation of the parties, and good cause appearing,
20 the Court hereby enters the following Protective Order:
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1 **1. PURPOSES AND LIMITATIONS.**

2 Disclosure and discovery activity in this action are likely to involve
 3 production of confidential, proprietary, or private information for which special
 4 protection from public disclosure and from use for any purpose other than
 5 prosecuting this litigation would be warranted. The parties acknowledge that this
 6 Order does not confer blanket protections on all disclosures or responses to
 7 discovery and that the protection it affords extends only to the limited information
 8 or items that are entitled under the applicable legal principles to treatment as
 9 confidential. The parties further acknowledge, as set forth in Section 10, below, that
 10 this Stipulated Protective Order creates no entitlement to file confidential
 11 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
 12 followed and reflects the standards that will be applied when a party seeks
 13 permission from the court to file material under seal.

14 **2. DEFINITIONS.**

15 2.1 Party: any party to this action, including all of its officers, directors,
 16 employees, consultants, retained experts, insurers, and counsel (and their support
 17 staff).

18 2.2 Disclosure or Discovery Material: all items or information, regardless
 19 of the medium or manner generated, stored, or maintained (including, among other
 20 things, testimony, transcripts, or tangible things) that are produced or generated in
 21 disclosures or responses to discovery in this matter.

22 2.3 "Confidential" Information or Items: information (regardless of how
 23 generated, stored or maintained) or tangible things that qualify for protection under
 24 standards developed under Fed. R. Civ. Proc. 26(c). "Confidential" information or
 25 items include materials concerning the producing party's trade secrets (as that term
 26 is defined in California Civil Code section 3426.1) or other proprietary or
 27 confidential financial, operational, research and development or commercially
 28 sensitive information, information that implicates privacy rights, or information as

1 to which the producing party otherwise has a business or legal need for
2 confidentiality. The specific items that are designated as “Confidential” under this
3 Protective Order are listed in Section 3.

4 2.4 Receiving party: a Party that receives Disclosure or Discovery
5 Material from a Producing Party.

6 2.5 Producing Party: a Party or non-party that produces Disclosure or
7 Discovery Material in this action.

8 2.6 Designating Party: a Party or non-party that designates information or
9 items that it produces in disclosures or in responses to discovery as “Confidential”;
10 or a Party that designates information or items produced by a non-party in
11 disclosures or in responses to discovery as “Confidential.”

12 2.7 Protected Material: any Disclosure or Discovery Material that is
13 designated as “Confidential.”

14 2.8 Counsel: attorneys (as well as their support staffs).

15 2.9 Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as
17 an expert witness or as a consultant in this action and who is not a past or a current
18 employee of a Party or of a competitor of a Party and who, at the time of retention,
19 is not anticipated to become an employee of a Party or a competitor of a Party. This
20 definition includes a professional jury or trial consultant retained in connection with
21 this litigation.

22 2.10 Professional Vendors: persons or entities that provide litigation
23 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
24 demonstrations; organizing, storing, retrieving data in any form or medium, etc.)
25 and their employees and subcontractors.

26 2.11 Litigation: the captioned case.

27 2.12 “Other litigation”: litigation other than the captioned case.
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1 **3. DOCUMENTS ALREADY DESIGNATED AS CONFIDENTIAL.**

2 The documents which may be designated as “Confidential” contain the
3 following categories of information that the Parties have thus far identified as
4 potentially requiring protection under this Protective Order:

5 (a) Settlement Agreement and Mutual Release in Wham-O, Inc. v. Eileen
6 Sefchick, et al., Case No. RG07329828;

7 (b) any communications relating to the terms of the Settlement Agreement
8 and Mutual Release in Wham-O, Inc. v. Eileen Sefchick, et al., Case No.
9 RG07329828;

10 (c) Assignment Agreement between Lexington Insurance Company and Brian
11 Dubinsky; and

12 (d) any documents designated as “Confidential” or “Highly Confidential” in
13 Wham-O, Inc. v. Eileen Sefchick, et al., Case No. RG07329828.

14 **4. SCOPE.**

15 The protections conferred by this Stipulation and Order cover not only
16 Protected Material (as defined above), but also any information copied or extracted
17 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
18 testimony, conversations, or presentations by parties or counsel to or in court or in
19 other settings that might reveal Protected Material.

20 **5. DURATION.**

21 Even after the termination of this litigation, the confidentiality obligations
22 imposed by this Order shall remain in effect until a Designating Party agrees
23 otherwise in writing or a court order otherwise directs.

24 **6. ACCESS TO AND USE OF PROTECTED MATERIAL.**

25 6.1 Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a non-party in connection with this
27 case only for prosecuting, defending, or attempting to settle this litigation. Such
28 Protected Material may be disclosed only to the categories of persons and under the

1 conditions described in this Order. When the litigation has been terminated, a
2 Receiving Party must comply with the provisions of section 11, below (FINAL
3 DISPOSITION). Protected Material must be stored and maintained by a Receiving
4 Party at a location and in a secure manner that ensures that access is limited to the
5 persons authorized under this Order.

6 6.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated
9 “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Counsel of record in this litigation, as well as
11 employees of said Counsel to whom it is reasonably necessary to disclose the
12 information for this litigation;

13 (b) the officers, directors, and employees of the Receiving Party to whom
14 disclosure is reasonably necessary for this litigation);

15 (c) experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this litigation and who have signed the
17 “Agreement to Be Bound by Protective Order” (Exhibit A);

18 (d) the Court and its personnel, court reporters and their staffs;

19 (e) professional vendors to whom disclosure is reasonably necessary for this
20 litigation;

21 (f) during their depositions, witnesses in the litigation to whom disclosure is
22 reasonably necessary and who have signed the “Agreement to Be Bound by
23 Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits
24 to depositions that reveal Protected Material must be separately bound by the court
25 reporter and may not be disclosed to anyone except as permitted under this
26 Stipulated Protective Order; and

27 (g) the author or original recipients of the document, or the original source of
28 the information.

**7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION.**

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this litigation as “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

After being notified, the Designating Party must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Designating Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other litigation that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material, and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**8. UNAUTHORIZED DISCLOSURE OF PROTECTED
MATERIAL.**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to

1 whom unauthorized disclosures were made of all the terms of this Order, and (d)
2 request such person or persons to execute the “Acknowledgment and Agreement to
3 Be Bound” that is attached hereto as Exhibit A.

4 **9. FILING PROTECTED MATERIAL.**

5 Without written permission from the Designating Party or a court order
6 secured after appropriate notice to all interested persons, a Party may not file in the
7 public record in this litigation any Protected Material. A Party that seeks to file
8 under seal any Protected Material must comply with Civil Local Rule 79-5.

9 **10. FINAL DISPOSITION.**

10 Unless otherwise ordered or agreed in writing by the Producing Party, within
11 sixty days after the final termination of this action, each Receiving Party must return
12 all Protected Material to the Producing Party. As used in this subdivision, “All
13 Protected Material” includes all copies, abstracts, compilations, summaries or any
14 other form of reproducing or capturing any of the Protected Material. With
15 permission in writing from the Designating Party, the Receiving Party may destroy
16 some or all of the Protected Material instead of returning it. Whether the Protected
17 Material is returned or destroyed, the Receiving Party must submit a written
18 certification to the Producing Party (and, if not the same person or entity, to the
19 Designating Party) by the sixty day deadline that identifies (by category, where
20 appropriate) all the Protected Material that was returned or destroyed and that
21 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
22 summaries or other forms of reproducing or capturing any of the Protected Material.
23 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
24 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
25 work product, even if such materials contain Protected Material. Any such archival
26 copies that contain or constitute Protected Material remain subject to this Protective
27 Order as set forth in Section 4 (DURATION), above.

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Central
District of California on _____ [date] in the case of *Brian*
Dubinsky v. Liberty Surplus Insurance Corporation, Case No. CV 08-6744 MMM
(JWJx). I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject
to this Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this litigation.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service in connection with this
litigation or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____